

EX PARTE OR LATE FILED



June 26, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: Ex Parte Presentation in Docket 98-79

Dear Ms. Salas:

On June 22, 1998, I met with Jane Jackson, Joi Nolen, David Hunt, Vienna Jordan, Joe Bender of the Common Carrier Bureau's Competitive Pricing Division to discuss the attached materials. Please include this letter and the attached materials in the record of the above-referenced docket.

Please date-stamp the extra copy of this letter and return it in the enclosed envelope. Thank you for your assistance in this matter.

Sincerely yours,

Steven Gorosh
Vice-President & General Counsel

cc: Janice Myles
ITS

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NorthPoint Communications, Inc.

GTE ADSL Tariff Investigation

NorthPoint Meeting with FCC

June 23, 1998

Introduction to NorthPoint

- **A National Data CLEC**
- **Founded by An Experienced Team of CLEC Veterans**
- **Focused Exclusively on Delivering Dedicated Data Transport to Small and Medium-Sized Businesses**
 - Through Wholesale Agreements with Internet Service Providers and Other CLECs Nationwide
 - Currently Providing Fast, Affordable, and Reliable SDSL Service at 160, 416, 784, 1,040 Kbps to the Underserved Small Business Market
- **CLEC Authority Granted or Pending in 18 States**
- **Several Hundred Collocation Cages Purchased in 21 Key Markets**

NorthPoint Timeline

- 6/97: Incorporated
- 10/97: Technical Trials Initiated in SF Bay Area
- 3/98: Bay Area Customer Launch
- 6/98: Service to be Initiated in Los Angeles
- 7/98: Service to be Initiated in Boston
- 8/98: Service to be Initiated in New York

GTE's ADSL Tariff Does Not Recover Costs

- **GTE's Cost Support Data is Grossly Inadequate to Determine Whether its Rates Recover Appropriate Costs**
 - GTE Provides a Total Investment Amount and Total Installation Hours Without Specifying What Equipment is Used and What Tasks are Entailed
- **GTE's Cost Study Fails To Include Any Loop or Collocation Costs**
 - GTE's Cost Support Assumes DSL Loops Do Not Require Additional Costs; In California, GTE Claimed It Would Incur Additional Costs
 - GTE Cost Support Does Not Include Collocation Costs
- **GTE's Filing Suggests the Proposed Tariffed Rates Will Not Cover GTE's Costs**
 - E.g., When Marketing and Administration Costs Are Included, Some of GTE's Rates do Not Cover Costs

GTE's Proposed Tariff Will Create an Anti-Competitive Price Squeeze

- **Price Squeezes Are a Risk Whenever CLECs Must Obtain UNEs from the ILECs in Order to Offer Competing Services**
- **Price Squeezes Occur When the Retail Tariff Rates Are Less Than the Cost to CLECs of Obtaining UNEs Required to Compete**
- **GTE Fails to Impute UNE Charges which CLECs Must Pay to Compete, Including Loop, Collocation, and Transport**

GTE's Proposed Tariff Will Create an Anti-Competitive Price Squeeze (cont'd)

- **GTE's Retail Charges Are As Low as \$30/mo.**
- **To Compete in CA a DSL CLEC Must:**
 - Pay GTE More than \$19/mo. For a Loop and Cross Connect
 - Pay GTE Approximately \$50,000 + 1,644/mo. for Collocation and Power
 - Pay GTE or an Alternate Carrier for Transport From the CO to a Regional Node
 - Recover the Costs of Its DSL Equipment and Overhead
- **GTE's Full Retail Rate is Less Than the Price of GTE's Charges to CLECs for Loops, Collocation and Transport**

To Ensure DSL Competition, the Commission Should Prevent A Price Squeeze Through Imputation Rules

- For an Equally Efficient Competitor To Compete, GTE's Retail Price Must Equal or Exceed the Sum of the Prices GTE Charges for xDSL-related UNEs
- This Commission Has Recognized “that an imputation rule could help detect and prevent price squeezes.” Local Interconnection Order, ¶ 848.
- Imputation of Collocation, Loop and OSS Charges Also is Necessary to Ensure that ILECs do not “use services that are not competitive to subsidize services that are subject to competition.” 47 U.S.C. § 254(k)

GTE and Other ILECs Are Attempting To Create A Jurisdictional Whipsaw

- **The ILECs Are Tariffing Retail ADSL Services at the Federal Level**
- **Competitors Must Buy UNEs That Are Tariffed at the State Level**
 - Who is Going to Protect Against Price Squeezes if No Jurisdiction Reviews Both Retail and Wholesale Charges?
 - Danger Exacerbated by GTE's Use of Embedded Costs in its Federal Tariff, Whereas the Cost Basis for its UNE Prices in Most States is Some Form of Forward-Looking Incremental Costs
- **FCC Lacks State UNE Cost Data Necessary to Prevent Price Squeezes**
- **FCC Should Defer to States to Ensure Consistent Review**

GTE's Tariff Raises Parity Concerns

- **GTE is Proposing to Roll-out its ADSL Service Before It Offers the UNEs that Competitors Would Need to Offer a Truly Comparable Service**
 - No Retail ADSL Service Should Be Allowed Until GTE Provides an Unbundled DSL Loop and Sufficient Collocation Space

Conclusion

- The FCC Should Defer Retail DSL Tariff Review to States to Prevent Jurisdictional Whipsaw
- If the Commission Asserts Jurisdiction, It Should:
 - Require GTE To Impute the Loop, Collocation, Transport and OSS Costs Which GTE Charges to DSL Competitors
 - Require GTE To Provide Sufficient Documentation to Ensure that GTE's Retail ADSL Rates Fully Recover GTE's Additional Equipment and Overhead Costs
 - Require GTE to Postpone Retail Service Initiation Until it Begins Providing Unbundled Digital Loops and Meets CLEC Collocation Requirements